

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOAH ZAHARIA and OLIVIA SPELL,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

ICON BURGER ACQUISITION LLC d/b/a  
SMASHBURGER,

Defendant.

Case No. 2:21-cv-04313-JS-ST

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs Noah Zaharia and Olivia Spell respectfully submit this Notice of Supplemental Authority to bring to the Court's attention a recent ruling on the motion to dismiss in *Gillett v. Zara USA, Inc. et al.*, 2022 WL 3285275 (S.D.N.Y. Aug. 10, 2022), a similar New York Labor Law ("NYLL") § 191 putative class action. The *Zara* order, attached hereto as Exhibit A, is relevant because it considered and rejected both arguments Defendant makes here in support of dismissal.

First, the decision held that the plaintiff had Article III standing solely based on the fact that he was paid on a biweekly basis in violation of NYLL § 191. *See Zara*, 2022 WL 3285275, at \*6 ("Irrespective of the fact that Plaintiff ultimately received the entire sum of wages he was owed, this delay of payment, in and of itself, constitutes a concrete harm that suffices for purposes of Article III."). The decision further clarified that the "court does not read *TransUnion* or any other binding precedent to require a plaintiff to specify how he intended to take advantage of the time value of his wages if they had not been improperly withheld for a period of time." *Id.* at \*7.

Second, the decision held that a private right of action exists under NYLL § 191. *See Zara*, 2022 WL 3285275, at \*11 (“Defendants have presented no persuasive reason why this Court should depart from the myriad decisions in this Circuit that have followed *Vega* in finding a private right of action to enforce Section 191.”).

Dated: August 15, 2022

Respectfully submitted,

By: /s/ Yitzchak Kopel  
Yitzchak Kopel

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